

DATE: November 9, 1990

TO: Bruce Herring, Labor Relations Manager

FROM: City Attorney

SUBJECT: Definition of Defined Benefit Plan

You asked this office to provide you with a definition of the term "defined benefit" as used in pension or retirement plans.

A retirement or pension plan is treated as having a defined benefit if it contains an express formula not subject to employer discretion under which its participant's benefit can be computed. Any formula which promises an amount based on discretionary contributions of the employer would not be a defined benefit. A defined benefit pension plan can consist of employer or employee contributions, or a combination of the two. It provides fixed benefits to the employee based on formulas contained in the plan. The plan participants are entitled to a specific amount without regard to investment experience under the plan, forfeitures by participants or the size of the employer's contributions.

Incidental benefits under a pension plan are not part of the defined benefit. Incidental benefits may include retiree health insurance, "a 13th check" or death benefits. All of these benefits, however, must be subordinate to the defined benefit provided by the plan and a separate account must be established to which the employer makes reasonable and ascertainable contributions. Treas. Reg. section 1.401-1(b)(1)(i).

A cost of living adjustment in a plan is not thought of as a separate benefit formula in itself. However, benefits determined by a cost of living formula are considered to be a definitely determinable benefit or in other words as part of the defined benefit.

JOHN W. WITT, City Attorney

By

John M. Kaheny

Chief Deputy City Attorney

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